

## **INFORMATION BULLETIN # 60**

### **SALES TAX**

**July 2006**

**(Replaces Bulletin #60 dated April 2004)**

**DISCLAIMER:** Informational bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Information in the bulletin that is inconsistent with any law, regulation, or court decision is not binding on either the Department or the taxpayer. Therefore, this information should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUBJECT:** Construction Contractors Tax Responsibility

**REFERENCES:** IC 6-2.5-1-5, IC 6-2.5-3-2, IC 6-2.5-3-3, IC 6-2.5-4-1, IC 6-2.5-4-9, IC 6-2.5-5-3, 45 IAC 2.2-3-7 through 45 IAC 2.2-3-12, 45 IAC 2.2-4-21 through 45 IAC 2.2-4-26

### **INTRODUCTION**

The general rule for the application of sales and use tax is that all sales of tangible personal property are taxable and sales of real property are not. This general rule is not changed when a construction contractor converts tangible personal property into real property by attachment. All construction materials purchased by a construction contractor are taxable.

### **DEFINITIONS**

- A. "Construction contractor" means anyone who is obligated to furnish the necessary labor and construction material to improve real property. This includes a general or

prime contractor, subcontractor or specialty contractor. The term also includes persons engaged in building, cement work, carpentry, plumbing, heating and cooling, electrical work, roofing, wrecking, excavating, plastering, tile work, road construction, landscaping, installing underground sprinkler systems or making other improvements to real property.

- B. "Construction materials" means any tangible personal property intended for incorporation in or improvement to real property. Improvements include both new installations and repairs to existing improvements to real property.

Examples of improvements or repairs to real property are: doors, garage doors, garage door openers, windows, cabinets, garbage disposals, water heaters, water softeners, alarms, furnaces, central air conditioning units, gutters, carpeting and fencing.

Examples of items which are not improvements or repairs to real property are: personal computers, home stereos, televisions, refrigerators, stoves, dishwashers, garbage compactors, clothes washers and dryers and window air conditioning units.

- C. "Lump sum contract" is a contract in which all of charges are quoted as a single price. A construction contractor may furnish a breakdown of the charges for labor, materials and other items without changing the nature of the lump sum contract.
- D. "Time and material contract" is a contract in which all charges for labor, construction materials and other items are separately stated.
- E. "Manufacturer contractors" are construction contractors that manufacture, fabricate or assemble raw materials into new components to be used as construction materials to satisfy their obligation to perform a construction contract.

### **LUMP SUM CONTRACTORS**

If a construction contractor purchases construction materials pursuant to a lump sum contract, the construction contractor pays either: (1) sales tax at the time the construction materials are purchased, or (2) use tax at the time the construction materials are incorporated into real property if the contractor purchased or acquired the construction materials exempt from sales tax and the owner of the real property could not have purchased the materials exempt from sales tax.

### **TIME AND MATERIAL CONTRACTORS**

If a construction contractor purchases construction materials pursuant to a time and material contract, the construction contractor is a retail merchant and may purchase the construction material exempt from sales tax but must collect sales tax on the resale of the construction material and remit the sales tax.

### **MANUFACTURER CONTRACTORS**

Effective July 1, 2006, tangible personal property manufactured, fabricated or assembled, inside or outside Indiana is subject to use tax if the property is used, stored, consumed or distributed in the state. (P.L. 162-1006, Section 20, IC 6-2.5-3-2(d))

When raw materials are converted into a new component for construction into real property, sales tax will be collected or use tax will be due on the total cost of the raw materials.

### **CONTRACTOR'S PURCHASES OF EQUIPMENT**

A construction contractor's purchase of machinery, tools, equipment and supplies is subject to sales and/or use tax at the time of purchase. A customer's exempt status does not extend to the construction contractor.

A construction contractor's purchase of safety equipment used in the construction and repair of public roads, bridges, highways and other public infrastructure for a governmental entity is exempt from sales and use tax. Examples include, but are not limited to: traffic signals; signs; barrels; barricades; temporary pavement markings; materials to construct temporary traffic lanes, roads, and bridges; erosion control and drainage materials; aggregates used to set grades; and field offices and communications equipment, provided such offices and equipment are exclusively for the use of government representatives.

### **CONTRACTOR'S REGISTRATION**

Time and material construction contractors are retail merchants and must register with the Indiana Department of Revenue to purchase construction material exempt from sales and use tax.

Lump sum contractors must also register with the Department as a retail merchant, in order to purchase construction materials exempt from sales and use tax.

### **EXEMPTIONS FROM SALES AND USE TAX**

A. Time and material construction contractors that receive exemption certificates from nonprofit entities, may then perform the contract without obligation for the collection and remittance of sales and use taxes on construction materials purchased. The exemption certificate must be retained by the construction contractor for a period of three (3) years from the completion of the contract.

A Time and Material construction contractor is responsible for use tax, when materials purchased exempt from tax are later used in a lump sum contract.

B. Lump sum construction contractors may accept an exemption certificate from a nonprofit entity, but may not reissue it to any supplier of construction materials. The lump sum contractor must issue its own exemption certification to the supplier.

C. A construction contractor receiving an exemption certificate for a particular job should issue a ST-105 exemption certificate to subcontractors. Construction contractors and subcontractors must be registered as retail merchants in order to issue an exemption certificate (ST-105).

### **DIRECT PAYMENT PERMITS**

A construction contractor may not accept a direct pay permit in lieu of an exemption certificate

### **ASPHALT MANUFACTURERS**

Asphalt manufacturers are entitled to a manufacturing exemption for sales and use taxes (under Indiana Code IC 6-2.5-5) for the asphalt plant and pavers, including repair parts and fuel for the respective equipment. Asphalt manufacturers are granted an exemption from sales and use taxes for dump trucks used to transport "hot mix asphalt" from their asphalt plant to the job site.

No exemption from sales and use tax is available to the extent that the respective dump trucks are ever used to haul "raw materials."

No exemption from sales and use tax is available for dump trucks to construction contractors who do not produce "hot mix asphalt."

No exemption from sales and use tax is available for graders, rollers, distributors, front-end loaders and other construction equipment.

Actual records must be maintained to document the exempt usage, if any.

### **STREETS AND SEWERS**

Construction Contractors acquiring construction material for incorporation as an integral part of a public street or public water, sewage or other utility service system are exempt from sales and use tax on the purchase of the construction materials. The public street or public utility service system must be required under an approved subdivision plot and must be accepted by the appropriate Indiana political subdivision to be publicly maintained after its completion.

A handwritten signature in black ink, reading "John Eckart", is positioned to the left of a vertical red line. The signature is written in a cursive style.

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John Eckart, Commissioner